

<http://www.ecy.wa.gov/programs/wq/stormwater/municipal/MUNIdocs/2012comments/2012RTC/Part1.pdf>

### Response to the range of comments

- Ecology included jurisdictions and areas for coverage under this permit in accordance with applicable evaluation criteria and 40 CFR Section 123.32. Ecology evaluated potential new permittees using consistent criteria statewide, based on the federal rule and petition criteria developed by Ecology. Criteria for cities over 10,000 in population outside of federally-designated urbanized areas are at <http://www.ecy.wa.gov/programs/wq/stormwater/municipal/2012NewPermitteeEval.html>

The petition criteria used to evaluate unincorporated UGAs and the City of Blaine are available online at <http://www.ecy.wa.gov/programs/wq/stormwater/municipal/PermitsPermittees.html>

- Ecology included in the final permit the following jurisdictions and areas proposed in the draft permit:
  - City of Lynden - Ecology evaluated Lynden as a city of more than 10,000 in population outside of federal Urbanized Areas. Ecology determined that the City should be covered under the Western Washington Phase II Permit as a New Permittee. Permit coverage was deemed appropriate because the City's MS4 discharges to waterbodies with known bacterial problems (Bertrand Creek, Fishtrap Creek, Double Ditch, Bender Ditch, and the Nooksack River), and in consideration of the City's current population and recent population growth.
  - City of Snoqualmie - Ecology evaluated the City of Snoqualmie for coverage using the criteria for cities outside of urbanized areas with a population greater than 10,000. Ecology determined that the Snoqualmie should be covered under the Western Washington Phase II Permit as a New Permittees. Permit coverage was deemed appropriate because the City's MS4 discharges to waterbodies with known bacterial problems (Snoqualmie River Basin, including Kimball Creek), and in consideration of the City's current population and recent population growth. Snoqualmie was the fastest growing City in Washington State from 2000-2010, with a population increase from 1,631 to 10,670 residents. While the rate of growth has slowed substantially, additional development is contemplated in the Snoqualmie Ridge portion of the City.
  - Yakima County's unincorporated UGA of the City of Sunnyside – Ecology expanded the County's coverage based on the petition criteria. The area meets the population threshold of 1,000 people served by the MS4, and has impaired waterbodies within the UGA for fecal coliform, dissolved oxygen, and pH. Yakima County is already implementing its stormwater management program in this area. Based upon communications with County staff, Ecology understands that the County is currently implementing the SWMP in this area. Therefore, in the letter of notification to Yakima County, Ecology established a schedule to implement the SWMP from the previous permit no later than 30 days after the effective date of the permit. Ecology expects the County to implement the new requirements in the 2014 permit according to the schedule for all permittees.
  - Whatcom County's unincorporated UGA of Birch Bay – Ecology evaluated this area based on a petition submitted by North Sound Baykeeper Team and ReSources for Sustainable Communities and determined that it meets the petition criteria for coverage. The population of Birch Bay has increased 69% from 4,961 to 8,413 between 2000 and 2010, and is one of the fastest growing unincorporated urban growth areas in Washington State. The current population is estimated to double during the summer months with seasonal residents and tourist populations. In addition, water quality monitoring data has identified urban stormwater as a significant source of pollution in Birch Bay. Whatcom County does not currently apply the permit stormwater management program in the Birch Bay UGA, and Ecology determined

that the stormwater contribution to impairments must be addressed through implementation of the NPDES Phase II Municipal Stormwater permit in the Birch Bay UGA. In the letter of final notification to Whatcom County, Ecology established a schedule for implementation of the SWMP from the previous permit program consistent with the schedule for New Permittees.

Ecology did not include the following areas that were listed in the draft permits, based on the evaluation and public comments:

□ City of Grandview - Ecology evaluated the City of Grandview as an isolated city with a population of greater than 10,000 in the 2010 U.S. Census. Ecology determined that Grandview does not meet the criteria for coverage. A primary factor was the determination that the population served by the MS4 is below the 10,000 population threshold for permit coverage when areas that infiltrate all stormwater are subtracted from the 2010 federal census population figures. The Grandview Municipal Code states that —Storm runoff occurring on all new lots and developments (private property) shall be retained and disposed of on-site.‖ In 2011-2012, the City worked with the Sunnyside Valley Irrigation District to remove an additional portion of the MS4 from surface water discharges to infiltration. Another planned project will remove additional portions of the stormwater system from the MS4. For this reason the population served by the MS4 is likely to decrease instead of increasing.

• Kittitas County – OFM population estimates identified the UGA around the city of Ellensburg in Kittitas County as a UGA with a population over 1,000 people. Ecology evaluated the area to determine the population served by the MS4, and identified three areas within the UGA that infiltrate all stormwater on site. With these three areas removed from the total population, and in consideration of limited surface water discharges from the stormwater system, Ecology determined that the Kittitas County UGA associated with the City of Ellensburg does not meet the 1,000 population criteria for permit coverage.

□ Lewis County - Ecology determined that the Lewis County unincorporated UGA for the City of Centralia does not meet the criteria for coverage. A primary factor was the determination that the MS4 within the UGA serves fewer than 1,000 residents. Additionally, much of the UGA's stormwater infrastructure consists of ditches that infiltrate and are not connected to surface water. Lewis County also has a low growth rate (1 percent) and has a long-standing memorandum of understanding with Centralia to implement Phase II construction and development permit requirements within the UGA.

□ Clallam County - Ecology evaluated the Port Angeles unincorporated UGA using the petition criteria and determined that the UGA does not meet the criteria for coverage at this time. A primary factor was the determination that the UGA MS4 serves a population of less than 1,000 people. The UGA also had a negative growth rate between 2000 and 2010 of -2.4%. Much of the UGA is rural in character with little to no stormwater infrastructure. A developed portion of the eastern UGA contains no identifiable MS4. Soils in this area indicate the potential for rapid infiltration of stormwater runoff, corroborating the finding of no stormwater conveyance in the area. Ecology acknowledges the potential for contributions to impairment of small streams within Port Angeles from the upstream discharges within the County outside of the UGA, particularly in drainages to the western portion of the UGA, and strongly recommends that the County adopt the recommendations in its recently drafted *Comprehensive Stormwater Management Plan*.

□ Island County – Ecology evaluated the Oak Harbor unincorporated UGA using petition criteria and determined that the Island County UGA does not currently meet the criteria for coverage at this time. A primary factor was the determination that much of the UGA was previously built out. Current zoning codes for the remaining parcels limit residential parcels to 5 acre lots to maintain the rural character of Island County's UGA. In addition, Island County has many stormwater program elements in place. Ecology acknowledges the potential for contribution to Oak Harbor's MS4 from the stormwater discharges within the County's MS4, and strongly recommends that the County evaluate the on-site septic systems and adopt similar new development codes to the City of Oak Harbor.

□ Whatcom County Lake Whatcom Watershed – Ecology evaluated expanding the County's coverage area to include the unpermitted portion of the Lake Whatcom watershed. Ecology evaluated this area outside of the unincorporated UGA for the City of Bellingham as recommended in a TMDL for Lake Whatcom. Because

the Lake Whatcom TMDL has not been approved by EPA, this additional permit coverage area will not be included in the Western Washington Phase II Permit at this time.

Ecology did not include the following areas evaluated under a petition submitted during the public comment period by North Sound Baykeeper Team and ReSources of Whatcom County:

- ☐ Whatcom County UGA for City of Blaine – Ecology evaluated a petition to expand the coverage area of Whatcom County for the unincorporated UGA of the City of Blaine, and determined that the area does not meet the criteria for coverage because the population does not exceed 1,000 people. The current OFM population estimate for the unincorporated Blaine UGA is 344 people.
- ☐ City of Blaine – Ecology determined that the City of Blaine does not meet the petition criteria for permit coverage. The Drayton Harbor TMDL does not identify municipal stormwater from the City as a source of pollutants. In addition, Blaine’s stormwater program already has in place many key stormwater program elements covered in the permit.
- ☐ Ecology relies on other parties to submit a petition to initiate an evaluation of areas for coverage in addition to those listed in the draft permits. The petition requires data and information specific to the area being petitioned to demonstrate that the area meets the criteria and to justify coverage under the NPDES regulatory program. Ecology disagrees that the petition process has failed, as demonstrated by the evaluation and designation for coverage of the Whatcom County’s Birch Bay UGA under a petition submitted by North Sound Baykeeper Team and ReSources.
- ☐ Ecology evaluated cities of over 10,000 outside of urbanized areas, as required by the federal rule, and used its residual designation authority to evaluate the unincorporated UGAs around cities of over 10,000 covered by the 2007 permits. In evaluating areas for permit coverage, Ecology used federal criteria for determining the population served by the MS4 and discharging to —waters of the United States, which under the federal definition is limited to discharges to surface waters. The populations of all the areas Ecology evaluated are not significantly greater than the population thresholds of 1,000 and 10,000, according to the 2010 U.S. Census. Several of the unincorporated UGAs did not exceed the federal minimum threshold for coverage of 1,000 people served by the MS4 (40 CFR Section 122.32(c)), in part because of annexations by associated cities, in part because of large areas of infiltration, and in part because of the rural nature of land use and lack of MS4 infrastructure. Ecology plans to re-evaluate these areas for the next permit, and provided recommendations to each evaluated jurisdiction and area to improve the stormwater management program in the interim.
- ☐ Ecology criteria for evaluating coverage by petition or as a city of over 10,000 outside an urbanized area includes consideration of TMDLs for impaired waterbodies with a potential contribution to the impairment by the MS4. See comments under S7 Total Maximum Daily Load section of Part I for discussion of designating areas for coverage based on TMDL drainage areas.
  - Ecology agrees that regulating rural areas of Phase II counties is not appropriate under the Phase II permits at this time, as most of these areas would not meet the criteria for coverage. In addition to the questionable cost/benefits of implementing an urban stormwater program in a rural setting, such an expansion would include lands regulated under authorities such as the Forest Practices Act, and large areas of agricultural land that are specifically exempted from the permits in the federal rule.
- ☐ During the initial evaluation phase, Ecology reviewed the population figures for the Whatcom County unincorporated Lynden UGA and determined that, with an OFM estimate of less than 200 residents, it does not meet the criteria for further evaluation.
- ☐ Ecology did not make final determinations of coverage for the areas listed in the draft permits until after it considered all the comments received, as required by WAC 173-226-130. Ecology made preliminary determinations in the draft permit in order to provide public notice and invite public comment. Several of the preliminary determinations changed based on information submitted to or collected by Ecology and evaluated after the end of the comment period.
- ☐ The permits include footnotes for two types of new permittees. Requirements in footnotes of the Western Washington Phase II permit for New Permittees and expanded coverage areas that are cities, towns and counties named in S1.A.2 and S1.D.2.b.i include specific dates based on the effective date of the permit,

which is the date coverage begins. Requirements in footnotes for New Secondary Permittees in all three permits are based on the initial date of permit coverage, which vary depending on the date the permittee begins coverage. New Secondary Permittees may begin coverage at any time during the permit term, and most have different dates of coverage. Cities, towns and counties that begin coverage after the effective date of the permit will meet schedules for implementation provided as a condition of coverage by Ecology, consistent with S5.A.